



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/152476

PRELIMINARY RECITALS

Pursuant to a petition filed September 26, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on October 24, 2013, at Racine, Wisconsin.

The issue for determination is whether Petitioner was overissued BadgerCare+ benefits because the father of her child was living in the home, that was not reported and his income was not being counted for BC+ eligibility and premium calculation purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Dean Landvatter

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner was sent a notice of BadgerCare+/Medicaid overpayment dated September 19, 2013 that informed her that she had been overpaid BadgerCare+/Medicaid benefits in the amount of

\$5706.00 during the period from February 1, 2013 through August 31, 2013. That overissuance is comprised of premiums paid by the State for BadgerCare+ coverage during that time period. Petitioner timely appealed.

3. The reason for the alleged overissuance was that Petitioner failed to report the father (■■■) of her child was living in the home. His income was not counted for Medicaid eligibility purposes. The child in common was born in June 2012.
4. The agency based its decision that ■■■ was in the home of the following:
 - utilities at Petitioner's address are in the name of ■■■
 - the landlord was interviewed and indicated that the lease was in both names and though it became a month-to-month tenancy by August 2012, ■■■ still lived there;
 - a Racine Circuit Court paternity matter in March 2013 listed the same address for Petitioner and ■■■ and
 - an agency investigator interviewed Petitioner and his testimony as well as his written report indicated that Petitioner told him that ■■■ was at her residence most of the time, in fact, 80-90 % of the time.
5. The amount of ■■■'s income was not an issue at the hearing.

DISCUSSION

Medical assistance rules state that the Department "may" recover any overpayment that occurs because of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665 [BadgerCare].
 2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
 3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.
- Wis. Stat. § 49.497(1).*

Finally, in an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. A petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

The BadgerCare+ eligibility and premium calculations begin with a determination of who is included in the BadgerCare+ test group. The test group is the primary person and any individuals living in his/her household whose income and/or needs are considered when determining financial eligibility. *BadgerCare+ Eligibility Handbook, §2.2.*

Inclusion in the test group is determined by qualifying relationships and legal responsibility:

The BC+ Test Group includes the primary person and any individuals living in his/her household whose income and/or needs are considered when determining financial eligibility. Inclusion in the Test Group is determined by qualifying relationships and legal responsibility.

Anyone in the home who meets the criteria of being in the BC+ Test Group, is always included in the group whether or not s/he requested BC+.

BadgerCare+ Eligibility Handbook, §2.2.

The BadgerCare+ Test Group for a primary person who is residing with his or her own child must include a child under age 19 of the primary person and the co-parent of a primary person's child. *Id.* §2.2.1. Thus these rules make clear that Petitioner, her children and the co-parent, are included in the same group for BadgerCare+ purposes if residing in the same house and that the income of the co-parent must be counted.

Finally, where there is eligibility but a premium or higher premium would have been required the recoverable amount is the difference between premium owed and premium paid. *BEH, §28.4.2.*

The question is whether [REDACTED] was in the household. This case had a companion case for a FoodShare overpayment. DHA Case # FOP- 152477. The following is taken from the Discussion portion of that decision and is as relevant and determinative here as in the FoodShare case:

The documentary record provided by the agency is really laid out in the Findings at # 4 and does establish a prima facie case for the proposition that Petitioner and [REDACTED] were residing together. The question becomes whether the testimony of Petitioner overcomes that prima facie case.

Petitioner disputed the testimony of the investigator, testifying herself that she did not make the statements attributed to her. There is no documentary evidence to show [REDACTED] living at another address other than that of Petitioner. Her mother accompanied Petitioner to the hearing but could not provide details as to whether [REDACTED] was living in the home or not.

I find the testimony of investigator and landlord to be the more persuasive testimony. The address for [REDACTED] with the utility and in the Court records reinforces their testimony.

DHA case #FOP-152477, issued November 25, 2013, at page 3.

CONCLUSIONS OF LAW

That the evidence offered by the agency is sufficient to demonstrate that Petitioner was overpaid BadgerCare+ benefits in the amount of \$5607.00.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

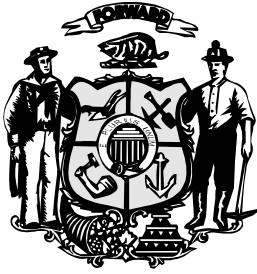
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of December, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 17, 2013.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability